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### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 27th August 1958*

S.O. 1823.—Whereas the election of Shri S. M. Banerji as a member of the House of the People from the Kanpur constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Krishna Agrwal. s/o L. Kedar Nath, 43/225, Chowk Sarafa, Kanpur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission:

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

#### IN THE COURT OF THE MEMBER, ELECTION TRIBUNAL, KANPUR

##### PRESENT:

Sri S. D. Singh, H.J.S., District Judge, Member.

ELECTION PETITION No. 284 of 1957.

Sri Sri Krishna Agrawal—*Petitioner.*

*Versus*

Sri S. M. Banerji—*Respondent.*

#### JUDGMENT

This election petition has been filed by Sri Sri Krishna Agrawal who is an elector in a single member Parliamentary Constituency, No. 331, in district Kanpur. The petition is directed against Sri S. M. Banerji who was elected Member of the Parliament from the aforesaid constituency in the last general election held in February-March, 1957. The nomination papers for the aforesaid constituency were filed on various dates between 19th and 29th of January, 1957. The scrutiny of the nomination papers took place on 1st February, 1957, and after the polling of votes was over, the result was declared on 13th March, 1957. The other candidates at the election were Sri Suraj Prasad Avasthi and three or four others. Sri Sri Krishna Agrawal has prayed for the election of Sri S. M. Banerji being declared void on the basis of the allegations contained in paragraph 5 of the petition. His contentions are that Sri S. M. Banerji was a Government servant, having been employed as Supervisor 'A' grade at the Government

Ammunition Factory at Kirki and was dismissed on charges of disloyalty and gross misconduct on 24th January, 1956, that Sri S. M. Banerji did not submit to the order of dismissal and filed a writ petition against the same in the High Court at Calcutta and that, therefore, he would be deemed to have been a Government servant on the date of the nomination. It is further alleged that being a dismissed Government servant, he was not competent to be nominated as a candidate for being elected to the House of People, as he had not obtained a certificate in the prescribed manner from the Election Commission to the effect that he was not dismissed for corruption or disloyalty to the State. Then it is alleged that just before the polling of votes there was a lightening strike by the workers of the Elgin Mills on 1st March, 1957, and the respondent along with the persons supporting his candidature, taking advantage of the situation, published a false news that Sri Suraj Prasad Avasthi, the chief rival candidate, had asked the management of the Elgin Mills not to distribute bonus to the workers and that the publication of this false news affected the result of the election. Sri Suraj Prasad Avasthi is alleged to have issued a public statement contradicting the false news spread by the respondent and his supporters, but that contradiction, it is alleged, could not undo the mischief which was done by the respondent.

It is further alleged that the respondent Sri S. M. Banerji was disqualified to be chosen to the seat under the various provisions of the Representation of the People Act and that the provisions of the aforesaid Act were not complied with by him as prescribed under Section 9, clause (3) of the aforesaid Act.

The petition is of course contested by Sri S. M. Banerji who admits that he was employed as a Supervisor 'A' Grade in the Ammunition Factory at Kirki and that he was dismissed on 24th January, 1956. He also admits that he filed a writ petition in the Hon'ble High Court against the order of the dismissal, but alleges that as he was advised that there was no force in that petition, he withdrew it. The respondent denies that he was disqualified to be chosen to fill the Parliamentary seat under any provision of the Representation of the People Act, 1951, or that he had not complied with the provisions of Section 9, clause (3), of the same. He has alleged that though he was a dismissed Government servant, he was not dismissed for corruption or disloyalty, that the acceptance of the nomination paper was not improper, that he never published the news that Sri Suraj Prasad Avasthi had asked the management of the Elgin Mills not to distribute bonus to the workers, that in any case this allegation did not amount to a corrupt practice within the meaning of Section 123 of the Representation of the People Act, 1951, and did not materially affect the result of the election. The respondent has also alleged that the petitioner did not comply with the mandatory provisions of Section 117 of the Representation of the People Act, 1951, and that, therefore, the petition was liable to be dismissed under Section 90(3) of the aforesaid Act and the petitioner was not entitled to any relief.

In respect of the allegation of the petitioner that the acceptance of the respondent's nomination paper was improper, he has further alleged that neither the candidate nor any of their agents objected to the nomination of the respondent on the ground that he was a dismissed Government servant for corruption and disloyalty and had not obtained the required certificate from the Election Commission. It is alleged that his nomination paper was *Ex facie* perfectly valid and did not disclose any defect and that, therefore, the Returning Officer cannot be said to have accepted the same improperly.

On these pleading the following issues were framed in the case:

#### ISSUES

1. Whether the dismissal of the respondent from the Government Ammunition Factory at Kirki was on account of corruption or disloyalty?
2. Whether the filing of a writ petition by the respondent against the order of his dismissal and the pendency of the writ petition at the time the nomination papers were filed amounted to the respondent not submitting to the order of his dismissal? Will he on that account be deemed to be a Government servant on the date the nomination papers were filed?
3. Was it necessary for the respondent to obtain a certificate from the Election Commission to the effect that he had not been dismissed for corruption or disloyalty before the nomination paper was filed?

Will the acceptance of his nomination paper by the Returning Officer be deemed to be improper on that account?

4. Was any objection raised by or on behalf of any of the candidates or any one else at the time of the scrutiny of the nomination papers that the respondent was a dismissed Government servant, the dismissal being for disloyalty or corruption? Does the failure to raise this objection at the time of the scrutiny of the nomination papers cure the defect in the nomination of the respondent, if there was any?

Was the nomination paper *ex facie* perfectly valid, and was it, therefore, properly accepted?

5. Did the respondent and persons supporting his candidature publish the false news that Sri Suraj Prasad Avasthi, another contesting candidate, had asked the management of the Elgin Mills not to distribute bonus to the workers? Does spreading of false news amount to a corrupt practice?
6. Did the spreading of the false news referred to in the last issue amount to a corrupt practice within the meaning of Section 123 of the Representation of the People Act? Was the result of the election materially affected on account of the spreading of this news?
7. Was the news that Sri Suraj Prasad Avasthi had asked the management of the said mills not to distribute the bonus to the workers actually false? If the news was correct, does it give any protection to the respondent, if he was in any way responsible for spreading the same?
8. Was the respondent not qualified to be chosen to fill the Parliamentary seat from Parliamentary Constituency 331, Kanpur, on the ground that he was a Government servant dismissed for disloyalty and gross misconduct and that a period of five years had not elapsed since his dismissal?
9. Did the respondent fail to comply with the provisions of sub-section (3) of Section 9 of the Representation of the People Act, 1951? How does it affect the rights of the parties?
10. Did the petitioner fail to enclose with the petition a Government Treasury Receipt showing a deposit of Rs. 1,000/- in favour of the Secretary to the Election Commission as security for the cost of the petition as prescribed in Section 117 of the Representation of the People Act? Is the petition liable to be dismissed under Section 90(3) of the Representation of the People Act on that Account?
11. To what relief, if any, is the petitioner entitled? The parties did not press for any other issue.

### FINDINGS

*Issue No. 1.*—This issue will have to be decided in the negative. The respondent Sri S. M. Banerji has filed the certificate, Ex. A4, granted by the Election Commission under sub-section (3) of Section 9 of the Representation of the People Act, 1951, to the effect that he was not dismissed from service for corruption or disloyalty to the State. This certificate is, under the provisions of sub-section (3) of Section 9 aforesaid, conclusive proof of the fact that Sri S. M. Banerji was not dismissed from service for corruption or disloyalty. The issue is, therefore, decided in the negative.

*Issue No. 2.*—This issue was not pressed at the time of the hearing of arguments. The filing of the writ petition by the respondent against the order of his dismissal could not by any means amount to suspension of the operation of the order of dismissal, unless any order to that effect was passed by the Hon'ble High Court. Even if the respondent did not submit to the order of dismissal, the order had its effect and the respondent could not, on that account, be deemed to have continued to be a Government servant. The issue is, therefore, decided in the negative.

*Issue Nos. 3 and 4.*—These two issues relate to the allegation that the acceptance of the nomination paper of Sri S. M. Banerji was improper. It is admitted by Sri S. M. Banerji that he was a Government servant having been employed as a Supervisor in the Government Ammunition Factory at Kiri and that he was dismissed from service on 24th January, 1956.

Under clause (f) of Section 7 of the Representation of the People Act, 1951, if a person has held any office under the Government and was, before or after the commencement of the Constitution dismissed for corruption or disloyalty, he would be disqualified for being chosen as a member of the Parliament, unless a period of five years has elapsed since his dismissal. Although this disqualification is applicable only to those Government servants who were dismissed for corruption or disloyalty to the State, a Government servant, who may have been dismissed even otherwise, has to comply with certain provisions of the Representation of the People Act, if he is a candidate for election either to the Parliament or the legislature of a State. If any question is raised whether a person is disqualified for being chosen as a member of the Parliament or the Legislature of a State, a certificate issued by the Election Commission that such person was not dismissed for corruption or disloyalty is, under clause (f) of Section 7, to be conclusive proof of the fact that he was not so disqualified. If he, having been dismissed within a period of five years, seeks election to the Parliament or Legislature of a State, he is under Section 33(3), not to be deemed to be duly nominated as a candidate, unless his nomination paper is accompanied by a certificate issued by the Election Commission as aforesaid, and under clause (b) of sub-section (2) of Section 36, the nomination paper of a candidate is to be rejected if there is failure on his part to comply with this provision of the law. Normally, therefore, Sri S. M. Banerji who was dismissed from Government service only in January, 1956, should have obtained the certificate of the Election Commission under Section 9(3) before his nomination paper was filed, and should have filed it before the Returning Officer along with his nomination paper under Section 33(3) of the Representation of the People Act, 1951. The petitioner wanted to raise this plea, but the allegations that have been made by him are incomplete. Under clause (d) of paragraph 5 he has alleged:

"That apart from the above mentioned reasons the nomination paper of the respondent was also improperly accepted by the Returning Officer inasmuch as the respondent having been dismissed from Government service did not obtain a certificate in the prescribed manner from the Election Commission to the effect that he had not been dismissed for corruption or disloyalty to the State."

There are two other clauses in the same paragraph of the petition which may also be reproduced with advantage:

"(h) That the respondent was disqualified to be chosen to fill the Parliamentary seat of the Parliamentary Constituency 331, Kanpur under the various provisions of the Representation of the People Act, 1951.

(i) That the respondent was employed and held the office of Supervisor 'A' Grade (Substantive U.D.C.) at the Government Ammunition Factory at Kirki under the Government of India and he was dismissed on the 24th January, 1956 for disloyalty and gross misconduct.

(ii) That since the respondent held an office referred to in clause (f) of Section 7 of the Representation of the People Act, 1951, and was on the date of nomination a dismissed employee of the Government and a period of five years had not elapsed since his dismissal he was disqualified.

(i) That the provisions of the Representation of the People Act, 1951, were not complied with by the respondent as required under Section 9, clause 3 of the Representation of the People Act."

The petitioner thus alleged that the respondent was a person disqualified under clause (f) of Section 7 of the Representation of the People Act and that he had not obtained the certificate from the Election Commission about his dismissal not being on account of corruption or disloyalty under Section 9(3), but there is no allegation that the nomination paper was not accompanied by a certificate issued by the Election Commission as aforesaid.

Some attempt was made by the petitioner to amend the petition so as to bring in that plea. But the applications were disallowed on the ground that it would have amounted to raising a new ground of attack after the expiry of the period of limitation for filing a petition against the election of the respondent. I will refer to my orders passed in that respect later, but for purposes of the two issues under discussion, it should suffice to say that, even if the petitioner had taken the plea that the certificate which was required to be obtained by the respondent

under Section 9(3) was not filed before the Returning Officer with the nomination paper as required under Section 33(3) it would have been of no avail in as much as that objection was not taken by him before the Returning Officer at the time of the scrutiny of the nomination papers.

There are two decided cases on this point. One of them is *G. Raja Nainar v. N. T. Velusamy Thevar* (A.I.R. 1958 Madras 198). In that case the nomination paper of Sri Arunachalam Nadar was objected to before the Returning Officer on the ground that he was employed as Head Master, National Training School, Tiruchender, which was run with Government grant and aid. It was contended that Sri Nadar held an office of profit in a concern where the State Government had financial interest and that, therefore, his nomination was invalid under clauses (d) and (c) of Section 7 of the Representation of the People Act. The Returning Officer accepted this contention and rejected the nomination paper. When after the result of the election was declared, Sri Arunachalam Nadar filed the election petition and raised the question of improper rejection of his nomination paper, the contesting respondent, besides urging the very same ground, put forward some other grounds as well on the basis of which it was urged that the nomination was invalid. Commenting upon that question their Lordships of the Madras High Court held that in a case where the nomination of a candidate is rejected by a Returning Officer, the enquiry before the Tribunal must be restricted to objections which the Returning Officer had to consider and decide, though not necessarily to the materials placed before the Returning Officer at the stage of the summary enquiry. It was further held that the Tribunal has no jurisdiction to investigate upon the truth and validity of those objections which were not put forward before the Returning Officer and which he had, therefore, no occasion to consider. The present case is the reverse of the case before the Madras High Court. Here the nomination paper was accepted in the absence of any objection having been raised on behalf of any interested person and applying the same principle to the fact of this case, an objection which was not raised before the Returning Officer will not be allowed to be raised before the Tribunal for defeating the result of the election. Sri Suraj Prasad Avasthi (P.W. 2), who is one of the defeated candidates in the election, has clearly stated that no objection was raised about the nomination of Sri S. M. Banerji before the Returning Officer. Sri D. S. Rathor, who was District Magistrate at Kanpur at that time and Returning Officer for this constituency has stated that he examined the nomination paper at the time of scrutiny, but he did not put any question to Sri S. M. Banerji as on the face of the entry in the electoral roll the entries in the nomination paper there was no occasion for putting any such question. What he meant thereby was that there was no *ex facie* defect in the nomination of Sri S. M. Banerji and in the absence of any other objection, the nomination paper was accepted as a proper one.

The same view has been taken by the Hon'ble Supreme Court in *Durga Shankar Mehta v. Bhuraj Singh* (A.I.R. 1954 S.C. 520). In that case the returned candidate Sri Vasant Rao was challenged in the election petition on the ground that he was under 25 years of age, which is a requirement prescribed for being a member of the Legislature under Article 173 of the Constitution. This objection was not raised before the Returning Officer. The entries in the electoral rolls were in favour of the returned candidate. When the objection that the returned candidate was under 25 years age was raised in the election petition, their Lordships held that the objection that there was improper acceptance of the nomination paper within the meaning of sub-clause (i) of clause (d) of Section 100(1) of the Representation of the People Act could not be raised though the ground could be put forward under sub-clause (iv) as being an instance of non-compliance with the provisions of the Constitution or of the Act or Rules or Orders made thereunder. Their Lordships observed:

"It would have been an improper acceptance if the want of qualification was apparent on the electoral roll itself or on the face of the nomination paper and the Returning Officer over-looked that defect or if any objection was raised and an enquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the materials placed before him. When neither of these things happen, the acceptance of the nomination by the Returning Officer must be deemed to be a proper acceptance. It is certainly not final and the Election Tribunal may on the evidence placed before it come to a finding that the candidate was not qualified at all, but the election should be held to be void on the ground of

substantial disqualification of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer."

This being the law, the omission of the part of the petitioner to raise the plea that the nomination paper of the respondent was not accompanied by a certificate of the Election Commission issued under Section 9(3) of the Representation of the People Act, 1951, becomes immaterial at least so far as these two issues are concerned. Even if such a plea had been taken, it would not have been permissible for the petitioner to challenge the acceptance of the nomination paper on that ground.

My findings on issue Nos. 3 and 4, therefore, are:

- (1) It was necessary for the respondent to obtain a certificate from the Election Commission to the effect that he had not been dismissed for corruption or disloyalty before his nomination paper was filed.
- (2) Sri S. M. Banerji has obtained such a certificate, though this was done after the result of the election was declared.
- (3) No objection was raised by or on behalf of any of the candidates or any other person at the time of the scrutiny of the nomination paper that the respondent was a dismissed Government servant, the dismissal being for corruption or disloyalty.
- (4) That the failure on the part of the petitioner or any other interested person to raise any objection against the nomination paper of the respondent at the time of the scrutiny of the nomination papers is fatal to the acceptance of the nomination paper being challenged on that ground and now, therefore, cure the defect in the nomination of the respondent.
- (5) That the nomination paper was *ex facie* valid and was, therefore, properly accepted.

*Issue Nos. 5, 6 and 7.*—These three issues relate to only one allegation which is contained in clause (g) of paragraph 5 of the petition and may, therefore, be considered together.

The allegation is that a week before the date of polling there was a lightening strike by the labourers in the Elgin Mills on 1st March, 1957, and the respondent and his supporters, taking advantage of that situation, came to the gate of the Elgin Mills and published a false news to the effect that Sri Suraj Prasad Avasthi had asked the management of the mills not to distribute bonus to the workers. It is alleged that when this fact was brought to the notice of Sri Suraj Prasad Avasthi he issued a public statement contradicting the false news spread by the respondent Sri S. M. Banerji and his supporters, but that it was too late and the mischief had already been done, and that this materially affected the result of the election.

The respondent has denied the allegation altogether. Oral evidence has been produced by the petitioner in support of the contention. It consists of the statements of a number of witnesses. Sri Suraj Prasad Avasthi has been examined as P.W. 2 and there are nine others, Sri Parsanni Lal (P.W. 3), Sri S. B. Hardikar (P.W. 4), Sri Ariun Arora (P.W. 5), Lochan (P.W. 6), Brahma Din (P.W. 7), Shankar Singh (P.W. 8), Shambhu Saran Rai (P.W. 9), Asha Ram (P.W. 10) and Ram Bux (P.W. 11).

Most of the evidence, however, goes against the pleadings. The only allegation that has been made by the petitioner is in respect of the publication of the alleged false news at the gate of the Elgin Mills. Parsanni Lal (P.W. 3) and Asha Ram (P.W. 10) have deposed about the alleged false statement having been made by Sri S. M. Banerji and others in mohallas Darshanpurwa and Kaushalpur. The election took place on 6th March, 1957, and according to the allegation clause (g) of paragraph 5 of the petition, the publication of the false news was made by and on behalf of the respondent on 1st March, 1957, i.e., about five days before the polling day. Parsanni Lal has, however, deposed that it was two or three days before the polling day that Sri S. M. Banerji, Maulana Sant Singh Yusuf, Gansh Dutt Baipai and others passed through Darshanpurwa and Kaushalpur and said that Sri Suraj Prasad Avasthi had got the payment of the bonus in the Elgin Mills stopped. Asha Ram (P.W. 10) has

also deposed in respect of the same allegation. He has stated that Sri S. M. Banerji and others came to mohalla Kaushalpuri at about 4 or 5 p.m. and that Sri S. M. Banerji then said that Avasthi had got the payment of the bonus withheld, and if the labourers wanted to have the bonus, they should not vote for him. It will thus be seen that these two witnesses do not establish the allegation in the petition, and refer to quite a different incident altogether.

Shanker Singh (P. W. 6) and Shambhu Saran Rai (P.W. 9) have also deposed that Sri S. M. Banerji and others spoke in a meeting in which it was said that Sri Suraj Prasad Avasthi had got the payment of the bonus at the Elgin Mills stopped. But even these witnesses have deposed, not about any such thing having been done at the gate of the Elgin Mills, but at *patharwala* temple in Gwaltoli. Even this evidence, therefore, goes against the particulars furnished by the petitioner in the petition.

Sri S. B. Hardikar (P.W. 4) and Sri Arjun Arora (P.W. 5) are two important witnesses whose words are entitled to some weight. Sri H. B. Hardikar was secretary of the City Congress Committee when the last general election took place and Sri Arjun Arora is a leader of about 20 or 21 years' standing. Both of them have deposed that they went out in a jeep and passed by the gate of the Elgin Mills, that the jeep was surrounded by the labourers who were raising slogans against the Congress and their candidate Sri Suraj Prasad Avasthi, and that on being asked as to why they had stopped the jeep and were raising slogans against the Congress, they said that Sri Suraj Prasad Avasthi for whom votes were being asked for did not want the labourers to get their bonus and that he had got the payment of the bonus stopped. Assuming that what these two witnesses have deposed is word to word correct, there is nothing in their statement to indicate that it was Sri S. M. Banerji or his supporters who told the labourers that Sri Suraj Prasad Avasthi had got the payment of the bonus stopped. Sri S. B. Hardikar has deposed:

"The labourers replied that Suraj Prasad Avasthi for whom we wanted the votes did not want the labourers to get the bonus and they were consequently against him. We tried to bring round the labourers, but we could not succeed. Ultimately the labourers th gave us way and our jeep proceeded forward."

Sri Arjun Arora has stated:

"The labourers surrounded the jeep and said that we wanted votes for the Congress and Avasthi had got out bonus stopped."

Then proceeding further he has deposed:

"The labourers also told us '*Jao, Jao, vote nahin milega. Guptaji bhi hargai aur Avasthi bhi har jawenge.*'"

At best, therefore what one can conclude from the statements of these two witnesses is that the labourers working in the Elgin Mills had a grievance against Sri Suraj Prasad Avasthi that it was he who was responsible for the payment of bonus being stopped. But there is nothing in the statements of these witnesses to show that it was Sri S. M. Banerji or his supporters or agents who were responsible for giving the labourers that impression. The statements of these two witnesses, therefore, do not support the allegation made by the petitioner.

There is also one important contradiction in the statements of these two witnesses. While Sri S. B. Hardikar has deposed that his jeep was stopped at the Elgin Mills gate at 4 or 5 p.m., Sri Arjun Arora has deposed that it was 8 p.m. then. It is difficult to say which of the two versions is correct, and which of the two witnesses may be relied upon.

Lochan (P.W. 6) and Brahma Din (P.W. 7) form another set of witnesses who have given evidence in connection with this allegation. According to them there was a strike in the Elgin Mills about five or six days before the polling and the workers of the morning shift who became off duty at 2 p.m. stayed on in the mills premises and came out at about 7 or 8 p.m. when they came out they saw a tonga standing outside the gate with a woman and four or five men inside it. One of these persons has been stated to be Sri Panna Lal and it has been deposed that he was speaking on loud-speaker saying that Pandit Suraj Prasad Avasthi had got the payment of the bonus stopped. According to Lochan, Panna Lal was saying:

"You are going on strike. Pandit Suraj Prasad Avasthi has got your bonus stopped."

Brahma Din (P.W. 7) has deposed that when he came out he heard Panna Lal saying that Avasthiji had got the bonus withheld.

Even the statements of these two witnesses, if taken to be correct, do not support the allegation of the petitioner. The only allegation in the petition is that the respondent himself, along with those supporting his candidature, came to the mill gate and published the false news about Sri Suraj Prasad Avasthi having got the payment of the bonus stopped. There is nothing in the statement of the two witnesses Lochan and Brahma Din that Sri S. M. Banerji was also in the tonga. As a matter of fact the manner in which the evidence has been led indicates that there were two incidents on two different dates, one on 1st March, 1957, when Sri S. B. Hardikar and Sri Arjun Arora had gone to the Elgin Mills in a jeep and the other on a later date when Sri Panna Lal is alleged to have gone there in the tonga.

Ram Baksh Rai (P.W. 11) has deposed that two persons, Kali Shandar and Jabbar who were working for Sri S. M. Banerji in the Victoria Mills, were doing propaganda for him and telling other labourers that votes should not be given to Sri Suraj Prasad Avasthi as he had got the payment of the bonus stopped. There is no allegation in the petition about any such false news having been published by or on behalf of Sri S. M. Banerji in the Victoria Mills. Even the statement of Ram Baksh Rai is liable to be ignored on that account. He also stated that Sri S. M. Banerji went to Gwaltoli bazar and was asking people to vote for him. No objectionable thing is said to have been given out by Sri S. M. Banerji in his presence. Mere criticism of the Congress during the election campaign cannot be said to be offensive to any one. Ram Baksh Rai's statement is also not of any help to the petitioner in establishing his contention.

We are left with the statement of Sri Suraj Prasad Avasthi who was examined as P.W. 2. He has stated that Lochan and Brahma Din and some other labourers of the Elgin Mills told him that there was a rumour in the mills that he got the payment of the bonus stopped in consultation with the Manager. He does not, however, depose that Lochan and Brahma Din and other labourers with whom he had a talk imputed the spreading of the rumour to Sri S. M. Banerji. If, therefore, there was a rumour in the Elgin Mills about Sri Suraj Prasad Avasthi having to the payment of the bonus stopped, Sri S. M. Banerji cannot be held responsible for the same, unless there is evidence that it was he who did the mischief.

Although the allegation has not been made out by the evidence produced by the petitioner, the respondent has also produced some evidence in rebuttal of the same. Sri Sant Singh Yusuf was one of the candidates in the last election. He was a candidate for the Assembly from the Central West Kanpur constituency. He has deposed that no worker of the Elgin Mills complained to him that there was any rumour that Sri Suraj Prasad Avasthi had got the payment of the bonus stopped. Binda Din (D.W. 2), Ram Narain (D.W. 3) and Fida Mohammad (D.W. 4) are labourers working in the Elgin Mills. They were on duty in the morning shift from 6 A.M. to 2 P.M. on 1st March, 1957. Anand Swarup Pandey (D.W. 6) and Jugal Kishore (D.W. 8) are also labourers in the Elgin Mills. They were in the morning shift from 6 A.M. to 2 P.M. on the day of election, i.e., 6th March, 1957, and they have deposed that five or six days earlier, i.e., 1st March, 1957, they were in the afternoon shift, i.e., from 2 P.M. to 10 P.M. All these witnesses have deposed that no strike took place in the Elgin Mills and that nothing happened outside the mill gate that evening. Even the witnesses who have been examined on behalf of the petitioner have admitted that workers of the morning shift did their full quota of work upto 2 P.M. and the workers in the second shift attended to their duties at 2 P.M. and remained on duty till the end. It must have been a strange kind of strike in which there was no stoppage of work at all. Even if there was any delay in the payment of bonus by the Elgin Mills and some workers of the morning shift stayed on after 2 P.M. to represent their case before the Manager, it cannot be said that there was any strike. No responsible officer of the Mill has been examined in support of this allegation.

Sri Panna Lal Pathak (D.W. 5) is the person in respect of whom it has been said that he had gone to the Elgin Mills in a tonga on the evening of 1st March, 1957, and said that Sri Suraj Prasad Avasthi had got the payment of the bonus stopped. He has denied the allegation and has said that he never said any such thing.

The entire allegation appears to be false and baseless. Sri Suraj Prasad Avasthi who was examined as P.W. 2 has deposed that when he was informed



of the wrong information which was being circulated among the voters, he issued a statement to contradict that rumour. His words in respect of this part of his case may be reproduced with advantage. He has deposed:

"This rumour was wrong. I issued a statement to contradict this rumour. On account of this wrong rumour I was questioned if this was a fact whenever I went to labour mohallas. In spite of my giving denial to it people were affected by it."

Sri S. B. Hardikar who was secretary of the City Congress Committee and incharge of the Prachar and Propaganda Department has deposed that Sri Suraj Prasad Avasthi gave him a statement which was sent to the papers. He filed Ex. 18 as the copy of the statement which was issued in that connection. In cross-examination he has given a rather conflicting statement. He at first did not remember if Suraj Prasad Avasthi gave him any statement under his own writing. Sri Hardikar claimed himself to be author of the draft of the statement Ex. 18. Then he said that Avasthi had given him a written draft, but he did not know where that original statement was, and that Ex. 18 was only a summary of that statement. He admits that he did not leave out any important matter in preparing this draft. The statement, Ex. 18, may now be looked into. If this statement was issued by Sri Suraj Prasad Avasthi to contradict their false news which had been spread out by Sri S. M. Banerji, one would expect that there would be some reference to that false rumour, but the statement is absolutely silent about it. The statement has the heading "Pandit Surya Prasad Avasthi ki appeal". In this statement Sri Suraj Prasad Avasthi has only put forward a new demand that the bonus for the year 1956 be paid to the labourers of the Elgin Mills immediately. There is no reference to any false rumour having been spread out by Sri S. M. Banerji that Sri Suraj Prasad Avasthi had got the payment of the bonus stopped. There is no reference to any such rumour being the subject of a talk among the labourers. Sri Suraj Prasad Avasthi has not said a word that the rumour was wrong. This by itself indicates that the allegation that Sri S. M. Banerji had given publicity to any such rumour is absolutely baseless.

Even if it is believed that Sri S. M. Banerji was responsible for the spreading of any such rumour, there should have been evidence on behalf of the petitioner that the news was wrong. In order that the alleged act may amount to a corrupt practice under sub-section (4) of Section 123 of the Representation of the People Act, 1951, the petitioner has to show that the respondent or his agent published a statement of fact which was false. The burden to establish such an allegation is, therefore, on the petitioner. Mere statement of Sri Suraj Prasad Avasthi on this point is not enough. He has of course deposed that he never met the Manager or any other officer of the Elgin Mills and the rumour which had gained currency was wrong. But as I have said above, his statement alone is not enough. The petitioner could have examined the Manager or some other officer of the Elgin Mills to show the circumstances in which the payment of the bonus was delayed or was stopped. Even if, therefore, there was any such statement of fact published by Sri S. M. Banerji, it has not been proved to be false.

Then even if it be supposed that the statement of fact which Sri S. M. Banerji is alleged to have published was false, it will not amount to a corrupt practice in as much as that is not the only ingredient of sub-section (4) of Section 123. This sub-section also requires that the person who published such false statement of fact should have either believed the statement to be false or did not believe it to be true. This allegation has not even been made by the petitioner in clause (g) of paragraph 5 of the petition or anywhere else. Nor is there any evidence that Sri S. M. Banerji believed the statement to be false or did not believe it to be true. The respondent's case, however, is that no such statement of fact was published by him and that allegation has been held by me above to be correct. But the fact remains that this important ingredient of the corrupt practice has not been alleged by the petitioner.

There is yet one other important ingredient of the offence of corrupt practice under sub-section (4) of Section 123 of the Representation of the People Act. The statement of fact should be in relation to the personal character or conduct of a candidate. If Sri S. M. Banerji spread the rumour that Sri Suraj Prasad Avasthi got the payment of bonus to the labourers of the Elgin Mills stopped, such an allegation would not be in relation to the personal character or conduct of Sri Suraj Prasad Avasthi. The only case law relied upon in this connection is a case decided by the Election Tribunal, Bombay, in 1953. That is a case reported as *Moinuddin B. Harris v. B. P. Divgi* (III E.L.R. 248). In that case

a certain *firman* or spiritual order was alleged to have been issued by or on behalf of the opposite party and referring to that statement the Tribunal observed on page 266 of the above report:

"The allegation made against the petitioner on this point does not refer to his personal conduct or character. In the Tirhut Division case *Shaik Muhammed Mansoor v. Maulvi Muhammad Shafi Daudi* (Hammond 677) it was held by the Election Tribunal that a distinction must be drawn between criticism of a candidate as a politician or a public man, and statements in relation to his personal character and conduct. Criticism of his public activities, however ill mannered, unfair or exaggerated, it may be, is not forbidden. It is only when 'the man underneath the politician' is attacked and his honour, integrity or veracity assailed that an election is liable to be set aside. It was held in this case that statements alleging that a certain person was a 'rebel from Islam' and a 'disgrace to Islam' were not such as to offend against the provisions of the election law as they were not directed against the man's personal character or conduct but against his activities as a public man. In the Hoshiarpur West Muhammadan Constituency, 1937, case (Sen and Potdar 299) the same view was taken."

The allegation even if made by Sri S. M. Banerji that Sri Suraj Prasad Avasthi got the payment of the bonus to the labourers stopped does not impute anything against his personal character or conduct and cannot, therefore amount to corrupt practice under sub-section (4) of Section 123 of the Representation of the People Act. The question whether the result of the election was materially affected on account of the spreading of this news does not, therefore, arise.

There is no evidence either that the alleged news was in fact correct. Sri S. M. Banerji has not produced any evidence to prove that the allegation that is alleged to have been made was true. Under these circumstances, therefore, the last part of issue No. 7, namely, "If the news was correct, does not give any protection to the respondent, if he was in any way responsible for spreading the same" does not arise.

**Issue No. 8.**—Disqualification against a dismissed servant for being a member of the Parliament or the Legislature of a State is contained in clause (f) of Section 7 of the Representation of the People Act, 1951. If a person has held any office under the Government and has been dismissed for corruption or disloyalty to the State, then unless a period of five years has elapsed since his dismissal, he cannot be chosen as a member of the Parliament or the Legislature of a State. It is admitted by the parties that Sri S. M. Banerji was employed as a Supervisor in the Government Ammunition Factory at Kirki and was dismissed on 24th January, 1956. But it has already been held by me in connection with issue No. 1 that he was not dismissed for corruption or disloyalty. Clause (f) of Section 7 of the Representation of the People Act does not, therefore, apply to the respondent Sri S. M. Banerji. Sri S. M. Banerji was qualified to be chosen to fill the Parliamentary seat from the Parliament Constituency 331, Kanpur. The issue is decided accordingly.

**Issue No. 9.**—This issue has been framed on the basis of the allegation contained in clause (i) of paragraph 5 of the petition, under this clause the petitioner has alleged that the provisions of the Representation of the People Act, 1951, were not complied with by the respondent as required under Section 9, clause (3), of the Representation of the People Act. This clause does not impose any duty upon a candidate. It only says that if any question is raised as to whether a person, who having held any office under the Government, has been dismissed, is disqualified under Section 7, clause (f) for being chosen as a member of the Parliament or Legislature of a State, the production of a certificate issued in the prescribed manner by the Election Commission to the effect that such person was not dismissed for corruption or disloyalty to the State shall be conclusive proof that he was not so disqualified. Clause (3) of Section 9, therefore, lays down merely a rule of evidence and does not in any way require a candidate to do or omit to do any particular thing and there can, therefore, be no question of the provisions of Section 9(3) of the Representation of the People Act not being complied with. The clause does not even lay down at what point of time the certificate should be obtained by a candidate. The evidence which is prescribed as conclusive proof of the dismissal not being for

corruption or disloyalty should of course be available at the time the question arises about the candidate's qualification. This question arose during the hearing of this petition and Sri S. M. Banerji produced the aforesaid evidence. It cannot, therefore, be said that the election of Sri S. M. Banerji is liable to be set aside under sub-clause (iv) of clause (d) of sub-section (1) of Section 100 of the Act for non-compliance with the provisions of the Constitution or of this Act or of any Rules or Orders made under this Act.

The contention of the petitioner should have been that Sri S. M. Banerji did not comply with the provisions of sub-section (3) of Section 33 inasmuch as the certificate under Section 9(3) of the Act did not accompany the nomination paper. This allegation was not made by the petitioner or any of the rival candidates before the Returning Officer, with the result that the nomination paper was accepted by him and the contention of the petitioner that there was improper acceptance of the nomination paper has been disallowed under issues Nos. 3 and 4 on the basis of the decision of the Hon'ble Supreme Court in *Durga Shankar Mehta v. Raghuraj Singh* (A.I.R. 1954 S.C. 520).

Reliance was placed by the learned counsel of the petitioner on the observation of the Hon'ble Supreme Court in the very same decision by which the election of Sri Vasan Rao was set aside on the ground that there was non-compliance with the provisions of the Constitution by him as he was less than 25 years of age, even though his nomination paper was held to have been properly accepted and the acceptance thereof was not allowed to be challenged in the election petition. But it will be remembered that the complete facts which established that there was non-compliance with the provisions of the Constitution in that case were urged by the petitioner in the election petition. As observed by their Lordships of the Supreme Court on page 521 of the aforesaid case, "The substantial ground upon which the petitioner sought to assail the validity of the election was that the respondent No. 2, Vasant Rao, who was declared duly elected to the reserved seat in the constituency was, at all times under 25 years of age and was consequently not qualified to be chosen to fill a seat in the Legislative Assembly of a State under Article 173 of the Constitution." This plea was specifically raised by the petitioner in that case and advantage of this plea was taken in two ways. It was urged that as Sri Vasant Rao was under 25 years of age, he could not have been validly nominated as a candidate and that the acceptance of nomination paper was, therefore, improper. The other ground of attack on the basis of the same facts was that there was non-compliance with the provisions of the Article 173 of the Constitution inasmuch as Vasant Rao was less than 25 years of age. The Supreme Court disallowed the former contention on the ground that that objection should have been raised before the Returning Officer at the time of the scrutiny of the nomination papers and that no objection having been raised on that account at that time and the nomination of Vasant Rao being proper in all respects according to the *prima facie* evidence that was before the Returning Officer at the time of the scrutiny, the acceptance of the nomination paper was proper. The second ground was, however, accepted as there was an obvious breach of the provisions of the Constitution in respect of the age of the returned candidate. The petitioner would have been entitled to rely upon *Durga Shankar Mehta v. Raghuraj Singh* (A.I.R. 1954 S.C. 520) if it had been alleged by him as a fact that Sri S. M. Banerji was not properly nominated as the certificate prescribed under Section 9(3) of the Act did not accompany the nomination paper. If that allegation had been made, then even though the acceptance of the nomination paper may not have been liable to be challenged on that ground, the election could be set aside under sub-clause (iv) of clause (d) of Section 100(1), as there was non-compliance with the provisions of Section 9(3) of the Representation of the People Act, 1951. That objection not having been taken by the petitioner, the contention that there was non-compliance with the provisions of Section 9(3) of the Act is of no avail.

The petitioner did of course try to get the petition amended to bring in the plea that the certificate prescribed under Section 9(3) of the Act did not accompany the nomination paper, but that prayer was disallowed under my order, dated 12th August, 1957, and subsequent order dated 24th March, 1958. One of the points raised by the petitioner at that time was that figure '9' was mistyped in clause (i) of paragraph 5 of the petition for the figure '33'. I need not repeat what I said in my previous orders. There was no possibility of the figure '9' being mistyped for '33'. And then a petitioner has to allege facts and not law. He could say under clause (i) of aforesaid that there was breach of the provision of Section 9(3) of the Act as the facts in respect of that plea were already given by him in clause (d). But there being no mention of the certificate not being filed with

the nomination paper anywhere in the petition, a plea that there was breach of the provision of sub-section (3) of Section 33 would have amounted to pleading the law without the facts.

I hold that the failure on the part of Sri S. M. Banerji to obtain the certificate from the Election Commission under clause (3) of Section 9 does not itself invalidate his election to the Parliament, though one may concede that having omitted to obtain the certificate there must have been the consequent failure on his part even to file the certificate with the nomination paper. That is, however, not the ground taken by the petitioner for declaring the election void.

*Issue No. 10.*—This issue based on the provisions of Section 117 of the Representation of the People Act, 1951, was not pressed by the respondent at the time of hearing of the arguments. There have already been several decisions of the Hon'ble High Court and the Hon'ble Supreme Court to the effect that such plea is of no avail. The Supreme Court decision *K. Kamaraji Nadar v. Kunju Thevar* (A.I.R. 1958 S.C. J. 681) has not been available at Kanpur. But the same view has also been taken by the Allahabad High Court in *Girdhar Gopal v. Farid Alam Chisti* (1958 A.L.J. 486), and *Bhuvanesh Bhushan Sharma v. Election Tribunal, Farrukhabad* (1958 A.L.J. 433). The issue is decided against the respondent.

*Issue No. 11.*—In view of the findings above the petition is liable to be dismissed with costs to the respondent. Having regard to the extent to the contest and the amount of evidence produced, Rs. 500/- may be awarded as costs to the respondent.

#### ORDER

The petition is dismissed with Rs. 500/- as costs to be paid by the petitioner to the respondent.

(Sd.) S. D. SINGH,

Member.

The 6th August, 1958.

[No. 82/284/57/186]

By order,  
A. N. SEN, Under Secy.